

**13-43-205. Advisory opinion.**

(1) A local government, private entity, or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written advisory opinion:

(a) from a neutral third party to determine compliance with:

(i) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;

(ii) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; and

(iii) Title 11, Chapter 36a, Impact Fees Act; and

(b) at any time before:

(i) a final decision on a land use application by a local appeal authority under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;

(ii) the deadline for filing an appeal with the district court under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local appeal authority is designated to hear the issue that is the subject of the request for an advisory opinion; or

(iii) the enactment of an impact fee, if the request for an advisory opinion is a request to review and comment on a proposed impact fee facilities plan or a proposed impact fee analysis as defined in Section 11-36a-102.

(2) A private property owner may, in accordance with Section 13-43-206, request a written advisory opinion from a neutral third party to determine if a condemning entity:

(a) is in occupancy of the owner's property;

(b) is occupying the property:

(i) for a public use authorized by law; and

(ii) without colorable legal or equitable authority; and

(c) continues to occupy the property without the owner's consent, the occupancy would constitute a taking of private property for a public use without just compensation.

(3) An advisory opinion issued under Subsection (2) may justify an award of attorney fees against a condemning entity in accordance with Section 13-43-206 only if the court finds that the condemning entity:

(a) does not have a colorable claim or defense for the entity's actions; and

(b) continued occupancy without payment of just compensation and in disregard of the advisory opinion.

Amended by Chapter 59, 2014 General Session